

Morrow



**Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Greenbrier Industries, Inc.

**File:** B-241304

**Date:** January 30, 1991

Michael J. Simon, Esq., Eisenberg, Honig, Fogler, Greenwalt & Davis, for the protester.  
J. Michael Slocum, Esq., Slocum, Boddie, Murry & Kirk, for J. Compton Sons and Webb, Ltd., an interested party.  
Mary Ann McNamar, Esq., and Edward J. Stolark, United States Marine Corps, for the agency.  
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest against the sole-source award of a contract for chemical protective suits is denied where the contracting agency reasonably determined that only one company was capable of expeditiously providing a suit amenable for use in "Operation Desert Shield."

### DECISION

Greenbrier Industries, Inc. protests the award of a sole-source contract to J. Compton Sons and Webb, Ltd. by the Marine Corps Research, Development, and Acquisition Command, for 72,992 Mark IV chemical protective suits.

We deny the protest.

This sole-source contract resulted from "Operation Desert Shield" in the Middle East. On August 2, 1990, the Iraqi military forces invaded Kuwait. In response to this action, the President of the United States dispatched several thousand Marines (and other military personnel) to Saudi Arabia to assist in defending that country against further Iraqi incursion.<sup>1/</sup> The Marine Corps advises that, at the time, the Marine Corps possessed only chemical protective suits, identified as the OG-84, for Marines participating in the operation. The Marine Corps reports that the OG-84 has two

<sup>1/</sup> Since the award of the contract, as of January 16, 1991, the United States, along with other allied world powers, began a full scale military campaign against Iraq.

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main drawbacks for use in Saudi Arabia, namely weight and coloring. The OG-84, which has woodland camouflage patterns instead of desert markings, was developed primarily for use in Northern Europe, and weighs 6.4 pounds. The Marine Corps reports that testing has shown that Marines may wear the heavier OG-84 suit only 51 minutes without health risks in heat similar to Saudi Arabia in the summer.

The Marine Corps advises that chemical protective suits are considered to be imperative due to Iraq's widely known reputation for using chemical weapons. Thus, the Marine Corps reports that an urgent and compelling need for purchasing additional chemical protective suits more suitable for immediate deployment in the Middle East was necessary in order to avoid the possible loss of life due to inadequate equipment.

The Marine Corps decided to procure the Mark IV suit, a light weight British produced chemical protective suit, because the Army and Marines had tested this suit in 1988, along with five other suits, and had selected it as the best suit for use in combat conditions similar to those in the Middle East. The Marine Corps found no other suit had sufficient testing data to satisfy its requirements, and reports that the Marine Corps-tested Mark IV suit is only manufactured by certain British companies and the technology to the suit is licensed by the British government.

The Marine Corps advises that since no Mark IV suits were in stock, it contacted the British Embassy and the British Ministry of Defense. The Ministry advised the Marine Corps of 5,000 suits immediately available that had been produced by J. Compton and asserted that it believed this was the only source currently capable of meeting the urgent requirements for the item.

Accordingly, on August 16, the Marine Corps issued an urgency statement for an expedited purchase of the Mark IV suits based upon deployment urgency, potential imminent use of chemical and biological weapons, and the immediate nature of the crisis in the Middle East. The Marine Corps determined that the unusual and compelling urgency of the crisis required using an exception to the normal procurement rules, and that the Mark IV suit was the only suit that met the Marine Corps' requirement that was available from industry for timely distribution to Operation Desert Shield forces. Delivery under the contract was to be made in monthly increments commencing September 1990 with complete delivery by March 1, 1991.

Because J. Compton was the only manufacturer with a substantial quantity of the Mark IV suits in inventory (5,000) with a current production line, on August 21, the Marine Corps awarded J. Compton a sole-source letter contract for the suits.<sup>2/</sup> The contract was justified under the exception to full and open competition granted in the Competition in Contracting Act of 1984 (CICA) for unusual and compelling urgency in accordance with 10 U.S.C. § 2304(c)(2) (1988). Greenbrier learned of the procurement from its material supplier and timely protested the award on September 26.

Under CICA, an agency may use noncompetitive procedures to procure goods or services where the agency's needs are of such an unusual and compelling urgency that the government would be seriously injured if the agency is not permitted to limit the number of sources from which it solicits bids or proposals. 10 U.S.C. § 2304(c)(2); see also FAR § 6.302-2(a)(2). This authority is limited by 10 U.S.C. § 2304(e), which requires agencies to request offers from as many sources as practicable. See also FAR § 6.302-2(c)(2). An agency using the urgency exception may restrict competition to the firms it reasonably believes can perform the work promptly and properly, see Industrial Refrigeration Serv. Corp., B-220091, Jan. 22, 1986, 86-1 CPD ¶ 67, and we will object to the agency's determination only where the decision lacks a reasonable basis. See Servrite Int'l, Ltd., B-236606, Dec. 6, 1989, 89-2 CPD ¶ 520. In this regard, we have recognized that a military agency's assertion that there is a critical need, which impacts military operations carries considerable weight. Id.

Greenbrier does not dispute the Marine Corps' determination that it had an urgent and compelling need for Mark IV chemical protective suits that required limited competition but argues that the Marine Corps acted unreasonably in negotiating solely with J. Compton and failing to solicit Greenbrier. In this regard, Greenbrier asserts that at the time the letter contract was awarded to J. Compton, Greenbrier had produced Mark IV suits for the Navy and was listed on the Defense Logistics Agency Industrial Preparedness Planning Program list as a manufacturer of chemical protective suits.

The Marine Corps responds that it was unaware of Greenbrier as a potential source before it was initially contacted by the company on September 7. The Marine Corps also reports that

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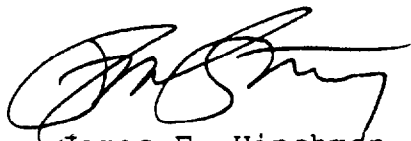
<sup>2/</sup> The contract was definitized on September 28 for 72,992 suits at the total contract price of \$9,999,904. On October 24, the Marine Corps executed a justification and approval for the contract in accordance with Federal Acquisition Regulation (FAR) § 6.302-2(c)(2).

Greenbrier has only manufactured several prototypes of a Marine Corps version of the Mark IV suit, which has not yet been tested by the Marine Corps and that Greenbrier does not have a current production line for the item. Consequently, the Marine Corps argues that Greenbrier could not have met the Marine Corps' need for immediate delivery of a British Mark IV suit, even if they had been recognized as a potential source.

We find that the Marine Corps acted reasonably in awarding J. Compton a sole-source contract in view of the crisis in the Middle East and the Marine Corps' legitimate urgent need for proven chemical protective suits to distribute to the Marines already deployed in the Middle East, especially since the Marine Corps was unaware of Greenbrier as a potential source at the time of award. As is noted in the justification and approval for the contract, the British Mark IV had been previously approved for use in this region and J. Compton was the only manufacturer that had a large quantity of the suits available immediately and could produce the quality and quantity to meet the Marine Corps' urgent requirements.

Moreover, notwithstanding Greenbrier's allegation that it can manufacture the Mark IV suit to meet the Marine Corps' requirements, the record indicates that Greenbrier's untested prototype was only a suit that it asserts is equivalent to the British Mark IV suit.<sup>3/</sup> Greenbrier does not deny its Mark IV equivalent suits were not tested when this contract was made, nor does it assert that they were in current production. Indeed, Greenbrier had actually produced only 240 of these suits for the Navy at the time of the J. Compton award. Consequently, Greenbrier was not prejudiced, even assuming the Marine Corps should have done a more thorough market survey in the short time it had after the commencement of Desert Shield.

The protest is denied.

  
for James F. Hinchman  
General Counsel

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<sup>3/</sup> The letters dated September 11 and 17 from Greenbrier to the Marine Corps regarding furnishing the Marine Corps chemical protective suits acknowledge that the Mark IV suit that Greenbrier produced for the Navy would require certain modifications.